

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Copeland, et al.

Plaintiffs,

-against-

Vance, et al.,

Defendants.

**DECLARATION OF
DANIEL J. ALBANO**

11 Civ. 3918 (KBF)

DANIEL J. ALBANO declares pursuant to 28 U.S.C. §1746, under penalty of perjury, that the following is true and correct:

1. I am currently a Lieutenant in the New York City Police Department (“NYPD”). I joined the NYPD in 1983.
2. I am also an attorney. I was admitted to the New York state bar in 1993.
3. I am fully familiar with the facts set forth herein which are based on my personal knowledge.
4. I am the Managing Attorney of the Criminal Section of the New York City Police Department. I respond to queries and requests from fellow NYPD members and provide legal advice. I also respond to inquiries from the public on legal questions on behalf of the Police Commissioner. The Police Department has never received an inquiry from a member of the public about the gravity knife statute.
5. My understanding of the identification of a gravity knife comes from the New York State Penal Law.

6. The Penal Law provides a functional definition; in order to be a gravity knife, a knife must have a blade that opens by gravity or the application of centrifugal force and locks into place.

7. For as long as I have been in the service, members of the NYPD have used a wrist flick test to determine whether a knife meets the functional definition of the Penal Law. An officer performing the wrist flick test holds the knife by the handle with one hand and applies centrifugal force by flicking his or her arm and wrist away from the body, either upwards, downwards, or across the body. If the blade is released from the handle and then locks into place it meets the definition of a gravity knife under the Penal Law.

8. In over thirty years with the NYPD, I have never heard of any other way to determine whether a knife is a gravity knife other than to perform the wrist flick test.

9. I have been present at the Mass Arrest Processing Center in Manhattan when officers are processing large volumes of arrests. I am there to assess whether there was probable cause for individual arrests and to help the officers determine the charges. If an arrest involves a charge of possession of a gravity knife, I ask the officer to demonstrate for me how he determined that the knife was a gravity knife. I would then observe the officer perform the wrist flick test. In this capacity, I have observed officers test folding knives with the wrist flick test between fifty and sixty times. In all cases, the knives being tested were folding knives.

10. At the Police Academy, recruits are taught about various weapons, including gravity knives, using the Student Guide's chapter on Weapons Offenses contained in Plaintiffs' Exhibit 30 and various Operation Orders issued by the NYPD regarding prohibited weapons contained in Plaintiffs' Exhibit 29.

11. Upon graduation from the Police Academy, new recruits are assigned to small groups under the close supervision of a Sergeant and a training Police Officer.

12. In the field, new officers have the opportunity to observe other officers performing the wrist flick test. Officers are not able to apply centrifugal force to a knife using a swivel or spinning chair.

13. NYPD officers have consistently applied the gravity knife statute in the same manner before, during, and after 2010.

14. Recently, the number of assaults involving gravity knives and other cutting instruments has been on the rise. For the first quarter of 2016, the NYPD Office of Management Analysis and Planning has recorded 999 felonious assaults involving cutting instruments, recorded as stabbings and slashings, in contrast to 828 such incidents in the first quarter of 2015.

15. As a result, the NYPD has had to introduce several initiatives to track and curtail these incidents. These initiatives are in keeping with the Police Department's ongoing efforts to perform its duty under the City Charter to keep New York City safe for all its citizens.

Dated: New York, New York
April 6, 2016



DANIEL J. ALBANO